TRANSCRIPT OF RECORD.

120-82

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 326. 81

EMIL HEINEMANN, FRANCIS PAYSON, AND GEORGE H MORGAN, PLAINTIFFS IN ERROR,

vs.

CHESTER A. ARTHUR, LATE COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 3, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Emil Heinemann, Francis Payson, and George H. Morgan, plaintiffs in error, and Chester A. Arthur, defendant in error, a manifest error hath happened, to the great damage of the said Heinemann, Payson, and Morgan, as is said, and as appears by their complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2d day of November, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the one hundred and seventh.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOSEPH M. DEUEL,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Allowed Nov. 2d, 1882.

N. SHIPMAN, *Judge.*

2 UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from three to forty-six, inclusive, contain a true and complete transcript of the records and proceedings had in said court in the case of Emil Heinemann, Francis Payson, and George H. Morgan, plaintiffs in error, against Chester A. Arthur, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern dis-

trict of New York, in the second circuit, this eighth day of September, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the one hundred and eighth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

[Endorsed:] U. S. Supreme Court. 3333. Emil Heinemann *et al.*, plaintiffs in error, *vs.* Chester A. Arthur, defendant in error. Writ of error. Sidney DeKay, plaintiffs' attorney, 115 Broadway, N. Y. [Stamped:] U. S. circuit court. Filed Nov. 3, 1882. Joseph M. Deuel, clerk.

Due service of a copy of within writ hereby admitted.

N. Y., Nov. 3d, 1882.

S. L. WOODFORD,
Attorney for Defendant in Error.

3 *Summons for a Money Demand on Contract.* (*Com. not ser.*)

Superior Court of the City of New York.

EMIL HEINEMANN, FRANCIS PAYSON, and GEORGE H. MORGAN, Plaintiffs,
against
CHESTER A. ARTHUR, Defendant.

To Chester A. Arthur, the defendant:

Yo are hereby summoned and required to answer the complaint in this action, which will be filed in the office of the clerk of the superior court of the city of New York, at the new court-house, in said city, and to serve a copy of your answer to said complaint on the subscriber at his office, number fifty-nine Liberty street, in said city, within twenty days after the service of this summons on
4 you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid the plaintiff in this action will take judgment against you for the sum of six thousand and sixty-nine $\frac{87}{100}$ (gold) dollars, with interest from the ninth day of July, one thousand eight hundred and seventy-four, besides the costs and disbursements of this action.

Dated New York, July 13th, 1874.

ISAAC PHILLIPS,
Plaintiffs' Attorney.

(Endorsed:) Superior court city of New York. Emil Heinemann & others against Chester A. Arthur. Summons. Rec'd July 13, 1874. Isaac Phillips, pl'ffs' attorney, 59 Liberty St.

5 The President of the United States of America to the judges of the —— court of the —— of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of

the United States for the southern district of New York, in
[L. S.] the second circuit, shall be certified of a certain cause commenced before you against Chester A. Arthur, defendant, by Emil Heinemann & *al.*, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the —— day of ——, 187–, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 9th day of November, in the year one thousand eight hundred and seventy-four.

KENNETH G. WHITE, *Clerk.*

STEWART L. WOODFORD,
Defendant's Attorney.

6 [Endorsed:] U. S. circuit court. Chester A. Arthur *ads.* E. Heinemann & *al.* Copy certiorari. Stewart L. Woodford, defendant's attorney. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, ——, 187–. Yours, Stewart L. Woodford, defendant's attorney; —— ——, plaintiffs' attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, ——, 187–. Isaac Phillips, plaintiffs' attorney.

7 *Bill of Particulars.*

Name of importer—Emile Heinemann, Francis Payson, & George H. Morgan, composing the firm of Heinemann, Payson & Morgan.
Description of merchandize—Wool.
Place whence imported—Yeisk, (Russia).
Name of vessel—Bark Edward Hoidt.
Date of invoice—Taganrog, 3–15 Oct., '73.
Date of entry at custom-house—Jan'y, 1874.
Amount of excess claimed, dollars—$6,069.87.
Date of payment—9 July, 1874.
Date of filing protest—4 March, 1874.
Date of appeal to Sec'y of Treas'y—6 March, 1874.
Date of decision on appeal—April 16, 1874.

8 Superior Court.

EDWARD HEINEMANN & others *ag't* CHESTER A. ARTHUR.

NEW YORK, *July* 20, 1874.

SIR: Please take notice that the following, or within, is a bill of particulars of the plaintiff's demand in this action, which is brought to recover money erroneously and illegally exacted of and from the plaintiffs by the defendant, as collector of customs at the port of New York, as and for duties on merchandise imported in the vessels

and at the dates specified in said bill of particulars, to which add legal interest on the amounts from the dates of payment as aforesaid.

9 Yours, &c., ISAAC PHILLIPS,
Plaintiffs' Attorney.

To George Blis, Esq., defendant's attorney.

(Endorsed:) Superior court. Emil Heinemann & others against Chester A. Arthur. Bill of particulars. Isaac Phillips, attorney for plaintiffs. Due service of copy of within bill of particulars and notice is hereby admitted. New York, July 20, '74, *187–*.

10 THE UNITED STATES OF AMERICA.

Circuit Court of the United States for the Southern District of New York. In the Second Circuit. Of the first day of December, in the year of our Lord one thousand eight hundred and seventy-four.

EMIL HEINEMANN, FRANCIS PAYSON, & GEO. H. MORGAN, Plaintiffs,
against
CHESTER A. ARTHUR, Defendant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Emil Heinemann, Francis Payson, and Geo. H. Morgan, plaintiffs in this suit, come here into court, and by Isaac Phillips, their attorney, suggest and give the court now here to understand and be informed that heretofore, to wit, on the thirteenth day of July last past an action was commenced in the superior court of the city of New York, according to the laws of the State of New York and the rules and practice of said court in such case made and provided, in favor and in the name of said plaintiffs against Chester A. Arthur, the defendant herein, upon and for the same cause of action hereinafter set forth, and the summons therein was filed in the clerk's office of the said superior court on the same day; that the defendants afterwards, by George Bliss, Esq., his attorney, duly appeared in said action, and such proceedings were thereupon had that afterwards and on the sixteenth day of November, in the year of our Lord one thousand eight hundred and seventy-four, the said action was in due form of law removed by writ of certiorari for further prosecution and trial into this court, according to the act of Congress in such case made and provided; and the clerk of the said superior court did thereupon return the said writ with the summons aforesaid, and did file the same in this court according to the course and practice of this court, which allegations and suggestions the defendant does not deny, but admits the same to be true.

Wherefore, let the further proceedings and trial in this action against the defendant be continued in this court.

And the said plaintiffs accordingly by Isaac Phillips, their attorney, complain of the defendant in this suit being in custody, &c., of a plea of trespass on the case for promises, for that whereas the said defendant heretofore, to wit, on the day of the date of this

declaration, to wit, at the city of New York, in the district aforesaid, was indebted to the said plaintiffs in the sum of seven thousand and $\frac{}{100}$ dollars, lawful money of the United States of America, for duties on certain merchandise, to wit, wool, unmanufactured, imported into and entered at the collection district of the United States for the city of New York on or about the following date, to wit, 5th (fifth) January, in the year one thousand eight hundred and seventy-four, in the following ships or vessels, to wit, bark Edward Hoidt, from Taganrog (Russia), unlawfully demanded, exacted, and received at the city of New York aforesaid, in the district aforesaid, by the said defendant, then collector of the customs for the district aforesaid, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest in writing in due form of law.

And being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the sum of money above mentioned, when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of seven thousand *thousand* dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant; and for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiffs; and being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless the said defendant (although often afterwards requested so to do) has not as yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiffs of fourteen thousand dollars, and therefore the said plaintiffs bring suit, &c.

ISAAC PHILLIPS,
Attorney for the Plaintiffs.

11 [Endorsed:] No. 3333. U. S. circuit court. Emil Heinemann & others *vs.* Chester A. Arthur. Declaration. Isaac Phillips, 59 Liberty —, attorney for plaintiffs. To George Bliss, Esq., deft's att'y. Sir: Please to take notice that on filing a declaration in this cause, with a copy whereof you are hereby served, a

rule has been entered in the Book of Common Rules, kept in the office of the clerk of this court, at the city of New York, requiring the within-named defendant to plead to said declaration in twenty days after the service of a copy thereof and notice of said rule on his attorney, or judgment, &c. New York, December 1st, 1874. Isaac Phillips, attorney for plaintiffs, 59 Liberty St. Due service of a copy of within declaration and above notice is hereby admitted this — day of ——, 187–. Dec'r 1, '79. —— —— Def'ts att'y.

12 *Plea.*

United States Circuit Court, Southern District of New York.

CHESTER A. ARTHUR *ads.* EMIL HEINEMANN & *al.*

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, etc., and says that he did not undertake and promise, in manner and form as the plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country, and the said plaintiffs do the like, etc.

GEORGE BLISS,
Defendant's Attorney.

To Isaac Phillips, Esq., plaintiffs' attorney.

13 (Endorsed:) U. S. circuit court. C. A. Arthur *ads.* Heinemann *& al.* Plea. George Bliss, attorney for defendant. Due service of a copy of the within is hereby admitted. New York, Dec. 5, 1874. Isaac Phillips, pl'ffs' att'y. You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York. New York, Dec. 5, 1874. Yours, etc., George Bliss, defendant's attorney. To Isaac Phillips, plaintiffs' attorney.

14 EMIL HEINEMANN *et al.* } 3333.
vs.
CHESTER A. ARTHUR. }

At a stated term of the circuit court of the United States of America, for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Wednesday, the 19 day of October, in the year of our Lord one thousand eight hundred and eighty-one—present, the Honorable Nathaniel Shipman, judge—on motion of Sidney DeKay, Esq., counsel for the plaintiffs in the above-entitled action, ordered trial.

Jurors sworn: Chas. H. Arnold, Moritz Walter, Henry S. Brevoort, Fred'k C. Richardson, Robert C. Fox, Willard F. Adler, Lewis Stenebock, Daniel S. Bedell, Jules A Montaut, Caleb T. Ames, John D. Griffin, John Beattie.

Mr. DeKay opens the case on the part of the plaintiffs.

Evidence for the plaintiffs.

Plaintiffs' entries, invoices, and protests.
15 Francis Payson sworn.
John A. Balch "

A. B. Herrick, Esq , ass't U. S. attorney, of counsel for the defendant, moves that the court direct the jury to find a verdict for the defendant, and is heard in support of said motion.

Mr. DeKay is heard in opposition thereto.

The court directs the jury to find a verdict for the defendant.

The jury say that by direction of the court they find a verdict for the defendant, and so say they all.

On motion of Mr. DeKay, ordered that the plaintiffs have a stay of proceedings for thirty days within which to prepare and serve a bill of exceptions herein.

Prior to the rendering and recording of the verdict Mr. DeKay excepts to the ruling of the court in directing the jury to find a verdict for the defendant.

16 *Judgment.*

United States Circuit Court, Southern District of New York.

EMIL HEINEMANN & *al.*
vs.
CHESTER A. ARTHUR. } 3333.

The issues in this action having been brought on for trial before Mr. Judge Shipman and a jury at a circuit court of the October term, 1881, and the issues having been tried, and a verdict for the defendant having been duly rendered on the nineteenth day of October, 1881, and his costs having been adjusted at $48.91: Now, on motion of Stewart L. Woodford, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.91, his taxed costs, and have execution therefor.

Judgment signed this 17th day of October, 1882.

JOHN A. SHIELDS,
Deputy Clerk.

17 (Endorsed :) 3333. United States circuit court. Emil Heinemann & *al. vs.* Chester A. Arthur. Judgment roll. Stewart L. Woodford, United States attorney, for defendant. Costs, $48.91. U. S. circuit court. Filed Oct. 16, 1882. Joseph M. Deuel, clerk.

18 *Plaintiffs' Bill of Exceptions.*

United States Circuit Court, Southern District of New York.

EMIL HEINEMANN, FRANCIS PAYSON, and GEORGE H. PAYSON
vs.
CHESTER A. ARTHUR. } 3333.

Afterwards, to wit, on the 19th day of October, 1881, at a stated term of the United States circuit court begun and holden at the city

of New York, to wit, on the third Monday of October, 1881, before the Honorable Nathaniel Shipman, district judge of the United States for the district of Connecticut, appointed to hold the said circuit court according to the form of the statute in such case made and provided, the aforesaid issues so joined as between the said
19 parties, as by the record more fully appears, came on to be tried before a jury duly empanelled and sworn for that purpose, the said plaintiffs being represented by Sidney DeKay, Esq., and the defendant by Albert B. Herrick, ass't U. S. attorney for the southern district of New York.

And in the course of the trial the counsel for the plaintiffs and defendant did take and allege sundry exceptions to the ruling of the court, which exceptions are hereinafter severally set forth.

To sustain the issues on their part the plaintiffs proved, by the testimony of one of the plaintiffs, that they did, on or about the 15th day of October, 1873, buy, pay for, and export from Taganrog, Russia, a certain class and grade of colored carpet wools, the actual cost of which, exclusive of charges, was below twelve cents per pound
20 at time and place of exportation, and the same were imported into New York city on the 5th day of January, 1874.

That the defendant as collector of the port of New York, on the 5th day of January, 1874, liquidated the same on payment of duty at three cents per pound, but finally reliquidated the same on the 27th day of February, 1874, and exacted thereon a duty of six cents per pound.

The plaintiffs made a due and timely protest against such final liquidation and exaction, of which protest the following is a copy:

"NEW YORK, *March 4th*, 1874.

"To collector of customs port of New York:

"We do hereby give you notice, pursuant to the requirement of the 14th section of the act entitled 'An act to increase duties on imports, and for other purposes,' approved 30th of June, 1864,
21 of our dissatisfaction at your decision and liquidation on or about the 27th day of January, 1874, of our entry per bark Edward Hoidt, arrived January 5th, 1874, from Yiesk, Russia, made in your office on or about the fifth day of January, 1874, for W. Y. & Co., 583 bales colored carpet wool.

"Entered in Russian roubles, the value of which we claim according to the act of Congress approved March 3rd, 1843, is not $77\frac{17}{100}$, as claimed in estimating the currency of the invoice from which the entry is made in reducing the same to United States money for the amount of duty at rates not authorized by law.

"The ground of our dissatisfaction, objections, and protest, both against said liquidation and against any and every payment which we may be required to make or may make thereunder, is that the merchandise aforesaid is entitled to have the legal rate of duty
22 assessed on the value declared on entry estimating the currency on which the invoice is made out in money of the United States at its rate as fixed and prescribed by existing laws for

such currency, and not at the rates for such currency as claimed and taken by you under Treasury instructions from January 1st, 1874, or at any time thereafter.

"We shall hold you responsible for the difference between the legal duty for the goods referred to above and the illegal duty claimed by you on the decision and liquidation before stated.

"In paying the amount thus illegally exacted we do so only for the purpose of obtaining or retaining the possession of our property, and we hereby appeal to the Secretary of the Treasury from your decision herein, and request you to transmit to him the duplicate hereof now lodged with you as our appeal.

23 We further give notice to you that we apply this notice to like exactions on each and every entry of like goods which we may hereafter make.

"HEINEMANN, PAYSON & MORGAN.

"Endorsed: Custom-house. Received Mar. 4, 1874."

24 The plaintiffs offered in evidence the invoice which accompanied the entry of the goods in question and which was delivered to the collector. The invoice was as follows:

"Invoice of bales: 583 Yiesk, washed, coloured long wool shipped at Yiesk on board of the 'Edward Hoidt,' Capt. T. Lorensen, bound to Gibraltar for orders, by order and for account and risk of Mess. Heinemann, Payson & Morgan, of New York.

"*Bill of Lading.* 3–15 *October*, 1873.

*

W. Y. & C. bales, 194, washed long yellow wool, weigh'g, p'ds---------- 2,174

Y.

No. 1 & 194.

*

W. Y. & C.

C.

No. 13153 " 153 " " gray " " -- 1,677.21

*

W. Y. & C.

B. R.

No. 1363 " 63 " " black " " -- 669.21

*

W. Y. & C.

B.

No. 13130, 133 " 173 " " black " " -- 2,044.33

135, 1373, 140, 142, 3144, 1463, 149, bls. 583, weighing, p'ds- 6,565.35

1513, 155, 157, 159, 160, 1635, 180, 182, 185, 190, 191, p'ds,

6,565.35; costing R°, 6.60, R°----------43,334.77

25	Baling & cost of bags, Z. 32c., p'd R°		2,101 08
	Laborage at shipment, Z. 60c., 73 "		349 80
Lighterage, Z. bl. 1.30⅔ (including dust) "			757 90
Delcredere on R° 40,000 " Z. 2% "			800 00
Telegram & sundry			43 00
			4,051 78
R°			47,386 55
Commission, 3%			1,421 50
Paper currency, R°			48,808 14
Making at the loss of 14% against silver currency.			
Silver currency, R°			41,975 01

Taganrog, 3–15th October, 1873.

WILLIAM YEAMES & CO.

(Endorsed:) Geo. B. Bailey. Forty-one thousand nine hundred and seventy-five silver roubles. 3–10 C. & C. Inse. a. 77.17.

I certify that this invoice was presented to me for entry, custom-house, New York, this 5th day of Jan'y, 1874. B. K.

EDWARD HAIDT, *D. C.*

7 & 15. A. P.

Jan'y 12, '74.
*
W. Y. & Co., five bales.
Y.
*

26

W. Y. & Co., five bales. Liquidated.
C.
*
W. Y. & Co., five " "
B. R.
*
W. Y. & Co., five " As noted. I. A. Balch.

Five of each mark.

B. AN.
J. McK.

Approved.

WM. A. DARLING,
Appraiser.

Certified. No. 187. Taganrog, 20–10, '73. H. W. B. H. B. G. ['74, Jan. 6.]

Add duty $6,069.87, July 9.

H. B. G.

" (Form No. 127.)

"Declaration to be made by the owner or manufacturer, a duly authorized agent of such owner or manufacturer, where goods have been procured otherwise than by purchase, and to be endorsed on or attached by seal and tape to each of the triplicate invoices.

27 "I, John Yeames, of Taganrog, do solemnly and truly declare that I am purchaser of the goods, wares, and merchandise in the written invoice mention and described; that the said invoice is in all respects true; that it contains as full and true statement of the actual market value of such of the said goods, wares, and merchandise as are subject to any ad valorem rate of duty, or to any duty regulated or directed by law to be estimated or based upon the value of the square yards or of any other specified quantity or parcel at the time and place when and where the same were manufactured or procured, of the actual quantity of said goods, wares, and merchandise, and of all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice except such as have been

28 actually allowed thereon, and that no invoice different from the one now produced has been or will be furnished to any one. I further declare that it is intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America.

"(Signed in triplicate.)

"JOHN YEAMES,
"*Purchaser.*

"Dated at Taganrog this 20th day of October, 1873."

(Endorsed:) 327.45 b's. W. Y. 142. Oct., '78. Heinemann *v.* Arthur. Defendant's Exhibit "A." I. M. S, ex'r.

" Form No. 128.

" Certificate to be endorsed on or attached by seal and tape to each of the triplicate invoices.

"I, Berthold H. Smith, consular agent of the United States at Taganrog, do hereby certify that at my office on this 20th day

29 of October, anno Domini 1873, the within invoice, numbered 187, in which are mentioned and described certain 583 bales washed colored long wool weighing gross pounds 6,565.35, amounting with the charges thereon to the gross sum of roubles 41,975.01, in effective money, was produced to me by John Yeames in person, the partner of Messrs. William Yeames & Co., purchasers of the goods, wares, and merchandise therein mentioned, who thereupon declared, in writing, in my presence, that it was intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America.

"I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents

30 himself to be, and that the actual market values or wholesale prices of the goods, wares, and merchandise described in

the said invoice in the principal markets of this country and at the time of exportation are correct and true (or as set forth in the column of consular corrections of estimates).

"Witness my hand and seal of office at Taganrog, the day and year aforesaid.

[L. S.] "BERTHOLD H. SMITH,
"*Consular Agent.*"

32745 cg.

That thereupon and within due time plaintiffs appealed from the decision of the defendant to the Secretary of the Treasury, who affirmed said decision, and the plaintiffs brought this action to recover the excess of duties alleged by them in their protest to have been exacted as aforesaid.

31 The evidence further showed that this class and grade of wools had theretofore and since the aforesaid liquidation and exaction been classified as wools costing less than twelve cents per pound at the time and place of exportation and subject to three cents per pound duty.

That before the proclamation of the Secretary of the Treasury of December, 1873, the terminal of reduction of the Russian silver rouble to the United States money of account was 75c., which would have brought this class of wools within the limit of less than twelve cents per pound. Since the proclamation of December, 1873, the value of the Russian silver rouble has been officially proclaimed by the Secretary of the Treasury to be less than 75 cents.

32 The plaintiffs presented a consular certificate dated September, 1878, and not attached to the invoice, which stated that the paper rouble was in September, 1873, less than 75c., to wit, 63⅛c., United States coin, for the Russian paper rouble.

That the director of the mint estimated the value of the Russian rouble for the year 1874 at 77.17 cents in United States money of account, and that the Secretary of the Treasury thereafter, on the 20th day of December, 1873, proclaimed by circular addressed to collectors of customs that "from and after January 1, 1874, the following table of standard values of foreign moneys, reduced to the moneys of account of the United States, will, until otherwise provided for by law or regulation, be taken at custom houses in computing the invoice value of all imported merchandise expressed in

33 such currency, to wit: Russian roubles of 100 copecks, silver, 77.17; estimating the rouble at 77.17 the goods cost over 12 cents per pound.

The testimony being closed, and both parties having rested, the defendant's counsel moved the court to direct a verdict for the defendant.

Plaintiffs' counsel requested the court to allow the case to go to the jury.

The court refused to submit the case to the jury, and thereupon plaintiffs duly and sufficiently excepted to such refusal. Plaintiffs' counsel requested the court to charge the jury that the Secretary of the Treasury had no power to dictate to the appraiser in the ascertain-

ment of the dutiable value. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal.

Also that the act of March 3rd, 1873, did not affect this case, the purchase having been made prior to the said act taking effect.

34 The court refused so to charge, and thereupon plaintiffs duly and sufficiently accepted to such refusal; also that the notation of 77.17 by the entry clerk was erroneous, and had it not been there the additional exaction would not have been made. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal.

Counsel further requested the court to charge that the difference between specific duty and ad valorem duty should govern in this class of goods, and that the laws being express as to wools paying upon the actual costs in cents at the time and place of exportation, no other method could be taken for the purpose of assessing duty, or to direct a verdict for plaintiffs. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal.

35 Also that the value of U. S. money should be taken at the time and place of exportation. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal.

The court granted the motion of the defendant's counsel and directed a verdict for the jury.

To this decision and direction the plaintiffs' counsel duly excepted, which exceptions were duly noted and allowed.

The jury thereupon rendered a verdict in favor of defendant.

Whereupon and because none of the said exceptions so offered and made to the opinion, instructions, and decisions of the court do appear upon the record of said trial, therefore, on the prayer of the said plaintiffs by their counsel, the said judge has to

36 this bill of exceptions put his seal as of the 3rd day of November, 1881.

N. SHIPMAN, [L. S.]
Judge.

(Endorsed:) U. S. circuit court, southern district of N. Y. Emil Heinemann *et al. vs.* Chester A. Arthur. Plaintiffs' bill of exceptions. Sidney De Kay, attorney for plaintiffs, 115 Broadway, New York city. Due service of a copy of within bill hereby admitted. Sept. 29, '82. S. L. Woodford, U. S. att'y, att'y for def't. U. S. circuit court. Filed Sept. 29, 1882. Joseph M. Deuel, clerk.

37 Supreme Court of the United States. October Term, 1882.

EMIL HEINEMANN, FRANCIS PAYSON, and GEORGE H. MORGAN, Plaintiffs in Error,
against
CHESTER A. ARTHUR, Defendant in Error.

Afterwards, to wit, on the second Monday of October, in the year one thousand eight hundred and eighty-two, in this same term, before the justices of the Supreme Court of the United States, at the

Capitol, in the city of Washington, come the said Emil Heinemann, Francis Payson, and George H. Morgan, by Sidney De Kay, their attorney, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid
38 it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant against the said plaintiffs; whereas, by the law of the land, the said judgment ought to have been given for the said plaintiffs against the said defendant. And the said plaintiffs pray that the judgment aforesaid, for the error aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that they, the plaintiffs, may be restored to those things which they have lost by reason of the said judgment.

SIDNEY DE KAY,
For the Plaintiffs in Error.

(Endorsed): Supreme Court of the United States. 3333.
39 Emil Heinemann, Francis Payson, and George H. Morgan, plaintiffs in error, against Chester A. Arthur, defendant in error. Assignment of error. Sidney De Kay, attorney for plaintiffs in error, 115 Broadway, New York city, Due service of a copy of within assignment of error hereby admitted. N. Y., Nov. 3rd, 1882. S. L. Woodford, U. S. att'y, att'y for def't in error. U. S. circuit court. Filed Nov. 3, 1882. Joseph M. Deuel, clerk.

40 *Joinder in Error.*

Supreme Court of the United States.

EMIL HEINEMANN, FRANCIS PAYSON, & GEORGE H. PAYSON, Plaintiffs in Error,
against
CHESTER A. ARTHUR, Defendant in Error.

And afterwards, to wit, on the set day of said term, before the justices of the Supreme Court of the United States, the said defendant in error, by Stewart L. Woodford, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof, now here may proceed to examine as well the records
41 and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed.

(S'g'd) S. L. WOODFORD,
Attorney for Defendant in Error.

(Endorsed:) U. S. Supreme Court. Emil Heinemann & *al.*, plaintiffs in error, *versus* Chester A. Arthur, defendant in error. Joinder in error. Steward L. Woodford, United States attorney, attor-
42 ney for defendant in error. Due service of a copy of the

within is hereby admitted. New York, Nov'r 3rd, 1882. Sidney De Kay, attorney for plaintiffs in error. To Sidney De Kay, attorney for plaintiffs in error. U. S. circuit court. Nov. 3, 1882. Joseph M. Deuel, clerk.

43 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

EMIL HEINEMANN, FRANCIS PAYSON, and GEORGE H. MORGAN, Plaintiffs,

vs.

CHESTER A. ARTHUR, Defendant.

Know all men by these presents that we, Fenelon Harks, of the city of New York, and Drake De Kay, of the same place, are held and firmly bound unto the above-named Chester A. Arthur in the sum of two hundred and fifty dollars, to be paid to the said Arthur, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the thirty-first day of October, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas the above-named Heinemann, Payson, and Morgan have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs shall prosecute said writ of error to effect, and answer all damages costs and if they fail to make said writ of error good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

FENELON HARKS. [L. S.]
DRAKE DE KAY. [L. S.]

Sealed and delivered and taken and acknowledged this 31st day of October, 1882, before me, by the said Drake De Kay and Fenelon Harks.

Witness my hand & official seal.

[L. S.] WILLIAM H. CLARKSON,
Notary Public for New York County, N. Y.

44 UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

Fenelon Harks and Drake De Kay, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilites.

DRAKE DE KAY.
FENELON HARKS.

Sworn to this 31st day of October, A. D. 1882, before me.
Witness my hand and official seal.
[L. S.] WILLIAM H. CLARKSON,
Notary Public for New York County, N. Y.

[Endorsed:] U. S. circuit court. Emil Heinemann *et al. vs.* Chester A. Arthur. Bond for damages and costs on writ of error. Sidney De Kay, pl'ffs' proctor, 115 Broadway, N. Y. Bond approved as to form and sufficiency of sureties. Nov. 2d, 1882. N. Shipman, judge. U. S. circuit court. Filed Nov. 2d, 1882. Joseph M. Deul, clerk.

45 UNITED STATES OF AMERICA, *ss:*

To Chester A. Arthur, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the second Monday of October, eighteen hundred and eighty-three, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Emil Heinemann, Francis Payson, and George H. Morgan are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Dated New York city, Nov. 2d, 1882.

N. SHIPMAN, *Judge.*

46 [Endorsed:] 3333. U. S. Supreme Court. Emil Heinemann *et al.*, plaintiffs in error, against Chester A. Arthur, defendant in error. Citation. Sidney De Kay, pl'ffs' attorney, 115 Broadway, N. Y. Due service of a copy of within citation hereby admitted. N. Y., Nov. 3, 1882. S. L. Woodford, attorney for defendant in error. [Stamped:] U. S. circuit court. Filed Nov. 3, 1882. Joseph M. Deuel, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 326. Emil Heinemann, Francis Payson, and George H. Morgan, plaintiffs in error, *vs.* Chester A. Arthur, late collector of the port of New York. Filed 3rd October, 1883.

120-82

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

EMIL HEINEMANN, FRANCIS PAYSON, and George H. Morgan, plaintiffs in error,
vs.
CHESTER A. ARTHUR, LATE COLLECTOR of the port of New York.

No. 81.

And now, December 20, 1886, comes G. A. Jenks, Solicitor-General, for defendant, and suggests the death of the honorable the late President of the United States, Chester A. Arthur, defendant, as collector, and moves the court to substitute Daniel G. Rollins and Charles E. Miller, his executors, as defendants in this case.

G. A. JENKS,
Solicitor-General.

~~180~~ 120-82

SUPREME COURT OF THE UNITED STATES.

EMIL HEINEMANN ET AL.,
Plaintiffs in Error,

against

CHESTER A. ARTHUR,
Defendant in Error.

PLAINTIFFS' BRIEF.

SIDNEY DEKAY,
Defendant's Attorney.

PATRICK A. COLLINS,
Of Counsel.

LIVINGSTON MIDDLEDITCH, Law Case Printer, 26 Cortlandt Street, N. Y.

Supreme Court of the United States.

EMIL HEINEMANN *et al.*,
Plaintiffs in Error,

AGST.

CHESTER A. ARTHUR,
Defendant in Error.

Plaintiffs' Brief.

This case, as presented to the Supreme Court of the United States, involves but one question, namely; Wools, being liable to a specific duty *determined by the cost thereof at the time and place of exportation*, can the Treasury Department, subsequent to the time of such exportation, arbitrarily change the medium of reduction of foreign currency into United States money, so that such wools on arrival will pay double the duty expected to be paid when shipped to the United States?

Statement.

In October, 1873, the plaintiffs bought, and on the 15th October, 1873, shipped from Russia a lot of Donskoi carpet wools. These wools were bought and shipped at a price which under the existing laws and treasury regulations would entitle them to

entry at 3 cents per pound. They arrived in the port of New York a few days after the 1st January, 1874. Subsequent to the date of shipment the Treasury Department declared that on and after the 1st January, 1874, merchandize arriving in the United States should be subject, in the ascertainment of duties, to certain valuations of foreign money, stated in the proclamation, and amongst other foreign moneys gave the value of the Russian Rouble as $77\frac{17}{100}$ cents, instead of 75 cents, which was the valuation of the Treasury Department *at the time of exportation.*

This new proclaimed value being taken for the ascertainment of the duty brought the wools into the 6 cent duty class.

The plaintiffs brought suit. And on the trial it was indisputably shown that the wools had never before been charged with more than 3 cents duty, nor since then, this being the sole exception.

The U. S. Appraiser, Mr. John A. Baush, whose experience and knowledge was on such questions the highest in the United States, testified that in ascertaining the value of these wools, "he had nothing to do with the place of import, but took the value in every instance on these wools at the time and place of exportation."

He further testified that "if these wools had come to me without an invoice, for valuation, I would have classified them at less than 12 cents per pound and at the rate of 3 cents duty," because *in every instance* he reduced the value of the rouble into dollars and cents per pound, *according to the value at the time and place of exportation.*

Decision was rendered in favor of defendant by Shipman, J., from which decision plaintiffs have appealed.

Points.

I.—*The numeral of silver roubles on the invoice was governed by the rate fixed by the United States at the time of exportation*

This is shown by the Government expert Baush in his testimony.

The reduction on the invoice from paper to silver roubles was made to enable the Government to further reduce to U. S. money, so as to get at the cost per pound at the time of exportation, and the duty imposed by the Government being a specific duty, and based only upon the value in U. S. Currency at the time and place of export, the numeral of silver roubles upon the invoice should have been governed by the rate of seventy-five cents, that having been the proclaimed silver rouble value at that time.

II.—*The value of the silver rouble in U. S. Currency had nothing to do with the value of the goods.*

The currency of traders in Russia at the date of this importation was paper roubles. The wools were paid for in paper roubles by bills of exchange based on English sterling, with which the paper was bought. The laws require that the currency in which the goods were bought should be stated, and it was so stated as paper roubles.

Now the value of the paper rouble fluctuates from day to day, and the silver rouble, if taken at 77 $\frac{17}{100}$ cents of U. S. money would have bought a much greater amount of paper roubles than at 75 cents in U. S. money. So if the Government of the United States insists upon taking the proclaimed rate on January 1st, 1874, to govern the reduction, they should make a corresponding and

proportionate decrease in the value of the paper rouble as a purchasing medium.

Donskoi wool is always purchased in the paper rouble of Russia, the numeral of which per pood is governed by the rate of exchange of the day. Thus, if one hundred paper roubles at a valuation of 75 cents per silver rouble in U. S. currency of account, would purchase a given number of poods of wool at less than 12 cents per pound, then 95 paper roubles would purchase the same quantity at a valuation of 79 cents per silver rouble in U. S. currency of account.

The actual cost in U. S. currency remains the same, although the rate named in paper was reduced.

The fact remains that the actual cost upon which the appraiser relies for classification for duty as under 12 cents per pound and 3 cents per pound duty has remained unchanged.

III.—*General provisions of Law do not effect a repeal of Specific Statutes.*

The tariff on *wool* is *specifically* stated and must stand until *specifically* repealed.

That merchandise generally is liable to duty upon the arrival at a port of entry with intent to unload thereat and is subject to the laws and regulations in force at the time of arrival is undisputed: but the *specific* duty on wools is determined only by the actual cost thereof "at the time and place of exportation," whether over or under 12 cents per pound in U.S. money. In the case presented for consideration the law has been complied with and no claim is made that the *wool* cost more than 12 cents per pound. In fact it is admitted that it did *not* cost 12 cents per pound and was at first passed by the custom house at 3 cents per pound, some official changing the numeral thereafter to

comply with the proclamation which had just then gone into operation.

At the date of this importation under *general* provisions of law the rate for the valuation of the Russian silver rouble as a numeral for the valuation of the paper rouble, the purchasing currency of Russia, had been advanced by the director of the mint, and duties were levied based upon such advance in the valuation of the silver rouble. This was maintained, because the merchandise so assessed was dependent upon an appraisal of the value covering cost and charges, and the fluctuations of an advancing market value, and when the U. S. Appraisers determined the dutiable valuation of the merchandise in foreign currency, the collector assessed the duty upon the currency value then legally in force upon all articles subject to duty *ad valorem*.

But the duty upon wools having been determined by specific enactment upon the cost in American currency at the time and place of shipment, no decrease in the mint value of the rouble could change the specific rate of duty for which it had legally become liable, *i. e.*, wool *costing* more than 12 cents per pound could not be classified at less than 12 cents because of the general reduction applying to all merchandise paying *ad valorem* duties, the general provisions of the law not repealing the specific duty on wool; and therefore, although all other merchandise imported at said time of reduction in valuation of the foreign currency would have the benefit of the general provisions of the law by a reduction in the duty assessed, wool remained unaffected, because the duty had been determined by law prior to the promulgation of said reduction in the value of the foreign currency, and could not benefit by said reduction unless by specific enactment.

In the present case, and for forty years, *carpet wools* in the Russian trade have been governed by the U. S. *Specific Wool Tariff*. No transactions in

open market for export to the United States can rule above 12 cents per pound in American currency, because *that is the limit*, and when holders ask more, the American buyer drops out of the market until purchases can be made under 12 cents per pound.

This limit caused the market price to be maintained, while American buyers were filling their orders, to a point just under 12 cents, and after shipments to the United States had ceased, the price generally fell off, except for special colors, for the European markets.

We submit, that while we admit that merchandise is subject generally to the operations of law prevailing at the time that it arrives in a port of entry of the United States, with intent to unload thereat, yet, that *wool* is not subject to any changes or modifications of existing law at the time of exportation to the United States, *unless the provisions of the wool tariff shall have been specifically changed and modified in specific terms*

IV.—*The original classification of the appraiser should govern.*

These goods were entered at a cost of less than 12 cents per pound. The appraiser passed the invoice as entered, and classified them at 3 cents per pound duty. The plaintiffs paid this duty, but subsequently the collector exacted an additional duty of 3 cents per pound on the plea that the value of the silver rouble at the time the goods arrived was $77\frac{17}{100}$, an increase of $2\frac{17}{100}$ cents over the value of the silver rouble prior to January 1st, 1884.

It was not for the appraiser to decide upon the *quality* of the goods or their *value in the markets of the United States*, but simply and solely what they *cost* at the time and place of exportation in American money, and by no known law or regula-

tion could the Collector rightfully insist upon any other mode of determining the dutiable value.

V.—*The present case does not involve any question of the bullion value of foreign coins.*

Any rate proclaimed by the Treasury Department to govern the value of the rouble at the time and place of exportation would have been accepted without hesitation, and in this respect we respectfully submit that this case has no resemblance to those cases wherein the right of the government to determine the values of foreign coins has been contested in this and other Courts of the United States.

VI.—The decision of the Circuit Court should be reversed, and judgment entered in favor of the plaintiffs.

Respectfully submitted,

SIDNEY DE KAY.

PATRICK A. COLLINS,
Of Counsel.

120-82

120-82

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

EMIL HEINEMANN, FRANCIS PAYSON, and George H. Morgan, plaintiffs in error,
vs.
CHESTER A. ARTHUR, LATE COLLECTOR of the port of New York.

No. 81.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

EMIL HEINEMANN, FRANCIS PAYSON, and George H. Morgan, plaintiffs in error,
vs.
CHESTER A. ARTHUR, LATE COLLECTOR of the port of New York.

No. 81.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR DEFENDANT.

On the 5th day of January, 1874, plaintiffs imported from Russia, on the bark Edward Hoidt a cargo of wool. The invoice was made at Taganrog the 15th of October, 1873. The collector assessed the duty upon the wool at 6 cents per pound, because its value exceeded 12 cents per pound. In fixing the value the collector estimated the Russian silver ruble, which was the currency in which the invoice was made, at 77.17 cents. The ruble was thus estimated by the collector in accordance with the proc-

lamation of the Secretary of the Treasury, which had been issued to take effect on the 1st day of January, 1874, in pursuance of the provisions of the act of Congress of the 3d of March, 1873. Prior to the 1st day of January, 1874, the silver ruble, when converted into United States money, had been valued at 75 cents, and had that been the value fixed upon the ruble in this invoice the wool would have been less than 12 cents per pound, and the duty would have been but 3 cents per pound. The collector liquidated the duty at 6 cents per pound on 27th day of February, 1874. On the 4th of March, 1874, the plaintiff protested against the liquidation on the ground that a ruble in the invoice should have been valued at 75 cents instead of 77.17 cents, and on the 6th of March appealed from this liquidation to the Secretary of the Treasury, who, on the 16th of April following, affirmed the decision of the collector. On the 9th of July, 1874, the plaintiffs paid the duty at the rate assessed at 6 cents per pound, and on the 13th July, 1874, this action was brought to recover from the collector the excess over 3 cents per pound.

Verdict.

A. B. Herrick, esq., assistant United States attorney, of counsel for the defendant, moves that the court direct the jury to find a verdict for the defendant, and is heard in support of the said motion.

Mr. DeKay is heard in opposition thereto.

The court directs the jury to find a verdict for the defendant.

The jury say, by direction of the court, they find a verdict for the defendant, and so say they all.

Judgment.

United States circuit court, southern district of New York.

EMIL HEINEMANN ET AL. vs. CHESTER A. ARTHUR. } No. 3333.

The issues in this action having been brought on for trial before Mr. Judge Shipman and a jury at a circuit court of the October term, 1881, and the issues having been tried, and a verdict for the defendant having been duly rendered on the 19th day of October, 1881, and his costs having been adjusted at $48.91, now, on motion of Stewart L. Woodford, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.91, his taxed costs, and have execution therefor.

Judgment signed this 17th day of October, 1882.

JOHN A. SHIELDS,
Deputy Clerk.

Plaintiffs' bill of exceptions.

United Staes circuit court, southern district of New York.

EMIL HEINEMANN, FRANCIS Payson, and George H. Morgan vs. CHESTER A. ARTHUR. } No. 3333.

Afterwards, to wit, on the 19th day of October, 1881, at a stated term of the United States circuit court begun and holden at the city of New York, to wit, on the third Monday of October, 1881, before the honorable Nathaniel Shipman, district judge of the United States for the district of Connecticut, ap-

pointed to hold the said circuit court according to the form of the statute in such case made and provided, the aforesaid issues so joined as between the said parties, as by the record more fully appears, came on to be tried before a jury duly impaneled and sworn for that purpose, said plaintiffs being represented by Sidney De Kay, esq., and the defendant by Albert B. Herrick, assistant United States attorney for the southern district of New York.

And in the course of the trial the counsel for the plaintiffs and defendant did take and allege sundry exceptions to the ruling of the court, which exceptions are hereinafter severally set forth.

To sustain the issues on their part the plaintiffs proved, by the testimony of one of the plaintiffs, that they did, on or about the 15th day of October, 1873, buy, pay for, and export from Taganrog, Russia, a certain class and grade of colored carpet wools, the actual cost of which, exclusive of charges, was below 12 cents per pound at time and place of exportation, and the same were imported into New York City on the 5th day of January, 1874.

That the defendant, as collector of the port of New York, on the 5th day of January, 1874, liquidated the same on payment of duty of 3 cents per pound, but finally reliquidated the same on the 27th day of February, 1874, and exacted thereon the duty of 6 cents per pound.

The plaintiffs made a due and timely protest against such final liquidation and exaction, of which protest the following is a copy:

NEW YORK, *March* 4, 1874.

To Collector of Customs, port of New York:

We do hereby give you notice, pursuant to the requirement of the fourteenth section of the act entitled "An act to increase duties on imports, and for

other purposes," approved 30th of June, 1864, of our dissatisfaction at your decision and liquidation on or about the 27th day of January, 1874, of our entry per bark Edward Hoidt, arrived January 5, 1874, from Yiesk, Russia, made in your office on or about the 5th day of January, 1874, for W. Y. & Co., 583 bales colored carpet wool.

Entered in Russian rubles, the value of which we claim according to the act of Congress approved March 3, 1843, is not 77.17, as claimed in estimating the currency of the invoice from which the entry was made, reducing the same to the United States money for the amount of duty at rates not authorized by law.

The ground of our dissatisfaction, objections, and protest, both against said liquidation and against any and every payment which we may be required to make or may make thereunder, is that the merchandise aforesaid is entitled to have the legal rate of duty assessed on the value declared on entry estimating the currency on which the invoice is made out in money of the United States at its rate as fixed and prescribed by existing laws for such currency, and not at the rates for such currency as claimed and taken by you under Treasury instructions from January 1, 1874, or at any time thereafter.

We shall hold you responsible for the difference between the legal duty for the goods referred to above and the illegal duty claimed by you on the decision and liquidation before stated.

In paying the amount thus illegally exacted, we do so only for the purpose of obtaining or retaining the possession of our property, and we hereby appeal to the Secretary of the Treasury from your decision herein, and request you to transmit to him the duplicate hereof now lodged with you as our appeal.

We further give notice to you that we apply this

notice to like exactions on each and every entry of like goods which we may hereafter make.

HEINEMANN, PAYSON & MORGAN.

(Indorsed:) Custom House. Received March 4, 1874.

The plaintiffs offered in evidence the invoice which accompanied the entry of the goods in question, and which was delivered to the collector. The invoice was as follows:

Invoice of bales: 583 Yiesk, washed, colored long wool, shipped at Yiesk, on board of the Edward Hoidt, Capt. T. Lorensen, bound to Gibraltar for orders, by order and for account and risk of Messrs. Heinemann, Payson & Morgan, of New York.

Bill of lading, 3, 15, *October*, 1873.

W. Y. and C. bales, 194, washed long yellow wool, weigh'g, p'ds.....	2,174 00
Y. No. 1 and 194. W. Y. and C. C. No. 13153 " 153 " " gray " " ...	1,677 21
W. Y. and C. B. R. No. 1363 " 63 " " black " " ...	669 21
W. Y. and C. R. No. 13130, 133 " 173 " " black " "	2,044 33
135, 1373, 140, 142, 3144, 1463, 149, bls., 583, weighing, p'ds.....	6,565 35
1513, 155, 157, 159, 160, 1635, 180, 182, 185, 190, 191, p'ds, 6,565.35; costing R°., 6.60, R°	43,334 77

Baling and cost of bags, Z. 32c., p'd R°..	2, 101	08
Laborage at shipment, Z. 60c., 73 " ..	349	80
Lighterage, Z. bl. 1.30⅔ (including dust) R°	757	90
Delcredere on R° 40,000 " Z. 2 per cent. R°	800	00
Telegram and sundry.....	43	00
	4, 051	78
R°	47, 386	55
Commission, 3 per cent	1, 421	50
Paper currency R°..	48, 808	14
Making at the loss of 14 per cent., against silver currency		
Silver currency, R°.....	41, 975	01

Taganrog, 3–15 October, 1873.

WILLIAM YEAMES & CO.

(Indorsed:) Geo. B. Bailey. Forty-one thousand nine hundred and seventy-five silver roubles. 3–10, C. & C., Inse., a. 77.17.

I certify that this invoice was presented to me for entry, custom-house, New York, this 5th day of Jan'y, 1874. B. K.

EDWARD HAIDT., *D. C.*

7 and 15. A. P. Jan'y 12, '74. W. Y. & Co., five bales. Y. W. Y. & Co., five bales. C. W. Y. & Co., five " B. R. W. Y. & Co., five "	Liquidated.	As noted.

I. A. BALCH.

Five of each mark.

B.
J. McK.
AN.

Approved.

WM. A. DARLING,
Appraiser.

Certified. No. 187. Taganrog, 20—10, '73. H. W. B. H. B. G. ('74, Jan. 6).
Add duty $6.069.87, July 9.

H. B. G.

(Form No. 127.)

Declaration to be made by the owner or manufacturer, a duly authorized agent of such owner or manufacturer, where goods have been procured otherwise than by purchase, and to be indorsed on, or attached by, the seal and tape to each of the triplicate invoices. I, John Yeames, of Taganrog, do solemnly and truly declare that I am a purchaser of the goods, wares, and merchandise in the written invoice mention and described; that the said invoice is in all respects true; that it contains a full and true statement of the actual market value of such of the said goods, wares, and merchandise as are subject to any ad valorem rate of duty, or to any duty regulated or directed by law to be estimated or based upon the value of the square yard or of any other specified quantity or parcel at the time and place when and where the same were manufactured or procured, of the actual quantity of said goods, wares, and merchandise, and of all charges thereon; that no discount, bounties, or drawbacks are contained in said invoice except such as have been actually allowed thereon, and that no invoice different from the one now produced has been or will be furnished to any

one. I further declare that it is intended to make entry of said goods, wares, and merchandise at the port of New York, in the United States of America.

(Signed in triplicate.)

JOHN YEAMES,
Purchaser.

Dated at Taganrog this 20th day of October, 1873.

(Endorsed:) 327.45 b's. W. Y., 142. Oct., '78. *Heinemann* v. *Arthur*. Defendant's Exhibit A. I. M. S., ex'r.

Form No. 128.

Certificate to be indorsed on or attached by seal and tape to each of the triplicate invoices.

I, Berthold H. Smith, consular agent of the United States at Taganrog, do hereby certify that at my office on this 20th day of October, anno Domini 1873, the within invoice, numbered 187, in which are mentioned and described certain 583 bales washed colored long wool, weighing, gross pounds, 6,565.35, amounting with the charges thereon to the gross sum of roubles 41,975.01, in effective money, was produced to me by John Yeames in person, the partner of Messrs. William Yeames & Co., purchasers of the goods, wares, and merchandise therein mentioned, who thereupon declared, in writing, in my presence, that it was intended to make entry of the said goods, wares, and merchandise at the port of New York, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the actual market value or wholesale prices of the goods, wares, and merchandise described in the said invoice in the principal market of this country and at the time of exportation are correct and true (or as set forth in the column of consular corrections of estimates).

Witness my hand and seal of office at Taganrog the day and year aforesaid.

[L. S.] BERTHOLD H. SMITH,
Consular Agent.

That thereupon, and within due time, plaintiffs appealed from the decision of the defendant to the Secretary of the Treasury, who affirmed said decision, and the plaintiffs brought this action to recover the excess of duties alleged by them in their protest to have been exacted as aforesaid.

The evidence further showed that this class and grade of wool had theretofore and since the aforesaid liquidation and exaction been classified as wools costing less than 12 cents per pound at the time and place of exportation and subject to 3 cents per pound duty.

That before the proclamation of the Secretary of the Treasury of December, 1873, the terminal of reduction of the Russian silver rubles to the United States money of account, was 75 cents, which would have brought this class of wools within the limits of less than 12 cents per pound. Since the proclamation of December, 1873, the value of the Russian silver ruble has been officially proclaimed by the Secretary of the Treasury to be less than 75 cents.

The plaintiffs presented a consular certificate dated September, 1878, and not attached to the invoice, which stated that the paper rouble was, in September, 1873, less than 75 cents, to wit, 63⅛ cents, United States coin, for the Russian paper ruble.

That the Director of the Mint estimated the value of the Russian ruble for the year 1874 at 77.17 cents in United States money of account, and the Secretary of the Treasuay thereafter, on the 20th day of December, 1873, proclaimed by circular addressed to the collectors of customs that "from and after January 1, 1874, the following table of standard values

of foreign moneys, reduced to moneys of account of the United States, will, until otherwise provided for by law or regulation, be taken at custom-houses in computing the invoice value of all imported merchandise expressed in such currency, to wit, Russian rubles of 100 copecks, silver, 77.17. Estimating the ruble at 77.17, the goods cost over 12 cents per pound.

The testimony being closed, and both parties having rested, the defendant's counsel moved the court to direct the verdict for the defendant.

Plaintiffs' counsel requested the court to allow the case to go to the jury.

The court refused to submit the case to the jury, and thereupon plaintiffs duly and sufficiently excepted to such refusal. Plaintiffs' counsel requested the court to charge the jury that the Secretary of the Treasury had no power to dictate to the appraiser in the ascertainment of the dutiable value. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal.

Also that the act of March 3, 1873, did not affect this case, the purchase having been made prior to the said act taking effect. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal; also that the notation of 77.17 by the entry clerk was erroneous, and had it not been there the additional exaction would not have been made. The court refused so to charge, and thereupon plaintiffs duly and sufficently excepted to such refusal.

Counsel further requested the court to charge that the difference between specific duty and ad valorem duty should govern in this class of goods, and that the laws being express as to wools paying upon the actual costs in cents at the time and place of exportation, no other method could be taken for the purpose

of assessing duty, or to direct a verdict for plaintiffs. The court refused so to charge, and thereupon plaintiffs duly and sufficiently excepted to such refusal.

Also that the value of United States money should be taken at the time and place of exportation. The court refused so to charge; thereupon plaintiffs duly and sufficiently excepted to such refusal.

The court granted the motion of the defendant's counsel and directed a verdict for the jury.

To this decision and direction the plaintiffs' counsel duly excepted, which exceptions were duly noted and allowed.

The jury thereupon rendered a verdict in favor of defendant.

Whereupon, and because none of the said exceptions so offered and made to the opinion, instructions, and decisions of the court do appear upon the record of said trial, therefore, on the prayer of the said plaintiffs, by their counsel, the said judge as to this bill of exceptions put his seal as of the third day of November, 1881.

N. SHIPMAN, [L. S.]
Judge.

BRIEF OF ARGUMENT.

The rate of duty imposed upon the wool included in the invoice on which this controversy arises is found in class 3, Schedule L, Revised Statutes, page 471, and is:

> Wools of the third class, the value whereof at the last port or place whence exported into the United States, excluding charges in said port, shall be 12 cents or less per pound—3 cents per pound. Wools of the same class, the value whereof at the last port or place whence exported to the United States ex-

> cluding charges in such port shall exceed 12 cents per pound—6 cents per pound.

The duty charged and paid, was at 6 cents per pound, because the value at the last port or place whence exported exceeded 12 cents per pound. If this reason be true, the imposition and collection of the duty was right. The entered value of the wool by the invoice was "41,975 silver roubles." (Rec., p. 10.)

Section 2900 Revised Statutes, declares:

> The duty shall not, however, be assessed upon an amount less than the invoice or entered value.

To determine how much the wool was worth per pound at the place whence exported it is only necessary in this dispute to convert the rubles to the "money account of the United States."

Plaintiffs contend that conversion should be made by valuing the ruble at 75 cents. The collector of customs valued it at 77.17 cents. If this value of 77.17 cents was the lawful value of the ruble, it is admitted the wool cost over 12 cents per pound (vide Rec., p. 12). The sole question, then, is should the Russian silver ruble on the 5th day of January, 1874, which was the date of the entry (Rec., p. 10), have been valued at 75 cents, or at 77.17 cents? The *Act of the 3d of March*, 1843 (U. S. Stat. L., vol. 5, p. 625), provides—

> That in all computations of the value of foreign moneys of account at the custom-houses of the United States * * * the ruble of Russia shall be deemed and taken to be of the value of 75 cents.

This act took effect at its date, and would, from its date, be a binding rule in the computation of the custom-houses

of the value of the Russian ruble, and would be now unless repealed. But, on the 3d day of March, 1873, the following act was passed (U. S. Stat. L., vol. 17, p. 702):

> SEC. 1. That the value of foreign coin, as expressed in the money of account of the United States, shall be that of the pure metal of said coin of standard value, and the values of the standard coins in circulation of the various nations of the world shall be estimated annually by the Director of the Mint, and proclaimed on the first day of January by the Secretary of the Treasury.
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> SEC. 2. That in all payments by or to the Treasury, whether made here or in foreign countries, when it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to $4.86 and 6½ mills, and the same rule shall be applied in appraising merchandise imported, when the value is by the invoice in sovereigns or pound sterling, and in the construction of contracts payable in sovereigns or pounds sterling; and this valuation shall be the par of exchange between Great Britain and the United States; and all contracts made after the first day of January, 1874, based on an assumed par of exchange with Great Britain, or 54 pence to the dollar, or $4.44⅘ to the sovereign or pound sterling, shall be null and void.
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> SEC. 3. That all acts and parts of acts inconsistent with these provisions be, and the same are hereby, repealed.

This act with reference to its repealing effect, was construed and applied by the Supreme Court of the United states, in the case of *Collector* vs. *Richards* (23 Wallace, p. 246). In that case the *Act of the 22d of May*, 1846 (U. S. Stat. L., p. 14), had provided "that in all computations at the custom-house, the foreign coins and money

of account herein specified shall be estimated as follows: The franc of France and Belgium, and the lira of Sardinia, at 18 cents and 6 mills."

It will be observed this act is almost identical in verbiage to the act of 1843, which applies to the Russian ruble. By estimating the franc at the value fixed by the act of 1846, the dutiable value of the goods imported in March, 1847, would have been less than 20 cents per square yard, and the duty thereon would have been 35 cents ad valorem, and an additional duty of 6 cents per square yard. In that case the Director of the Mint had valued, and the Secretary of the Treasury proclaimed the franc as worth 19 cents and 3 mills, which was adopted by the collector in determining the dutiable value of the goods, by which their value was assessed to exceed 20 cents per square yard, and subjected thereby to an ad valorem duty of 40 cents per square yard, and an additional duty of 8 cents per square yard. The question in that case seems to be, in all substantial respects, identical with that presented in this. This court thereon ruled that the act of 3d of March, 1873, repealed the act of the 22d of May, 1846, and affirms the assessment of duty as made by the collector. The opinion of the court clearly interprets the statute of 1873, and at the same time demonstrates its justice. Speaking of the rule fixed by statute, the following language is used:

> This simple and sensible rule abrogates previous regulations on the subject * * * it is just both to the Government and the importer because it is founded on truth.

But the counsel for the plaintiffs endeavored to make

this case an exception to this salutary rule fixed by the statutes.

First, By proving by one of the plaintiffs that the the goods cost less than 12 cents per pound at the place whence exported.

This is ineffectual, for the statutes already quoted provides, "the duty shall not, however, be assesed upon an amount less than the invoice or entered value," and the act of the 3d of March, 1873, just as clearly provides, as shown, how that value stated in the invoice shall be converted into the money of account of the United States. The parol testimony was, therefore, of no avail, to vary the value in opposition to this conclusive provision of law.

Second. The second ground on which this case is claimed to be exceptional is, the wool was purchased in October, 1873, and the act of 1873 did not go into effect until the 1st of January, 1874. This is legally inaccurate, for the act of 1873, like all other acts which do not specially provide otherwise, took effect from the date of its passage. It established from its date the rule "that the value of foreign coins * * * shall be that of the pure metal of such coin of standard value." It then further prescribed that on the first day of January of each year, evidence should be furnished by proclamation of the Secretary of the Treasury, which, during the year succeeding, should be the sole and conclusive evidence of the value of such foreign coin of standard value. Hence, when on the 1st day of January, 1874, the Secretary of the Treasury, in accordance with law, testified to the value of the Russian ruble, by his proclamation, in accordance with law, all other evidence, whether by consular certificates or

otherwise, was superseded, and during the year 1874 that proclamation fixed the value of the foreign coin as to every transaction in which that value was an element.

Third. The third ground indicated on which the plaintiffs claim this case should be excepted from the effect of the act of 1873, is "the laws being express as to wools paying upon the actual costs in cents at the time and place of exportation, no other method could be taken for the purpose of assessing duty." This ground is unsubstantial, for the laws did not say they shall be valued "in cents at the time and place of the exportation," as the rule to be adopted in valuing goods there, but the very contrary, as will appear by section 2838, Revised Statutes, which is:

> All invoices of merchandise subject to a duty ad valorem shall be made out in the currency of the place or country from which the importation shall be made, and shall contain a true statement of the actual cost of such merchandise in such foreign currency or currencies without any respect to the value of the coins of the United States, or of foreign coins by law made current within the United States.

This statute requires the value at the place of purchase to be fixed in the currency at the place of purchase, and forbids the conversion at the time or place of purchase of the value into the coin of the United States. Its intent was to expressly reserve the conversion of value as required to be shown by the invoice in the foreign currency to the officers of the United States, according to our own laws, and the rule for that conversion is fixed by the act of 1873.

G. A. JENKS,
Solicitor-General.